

Message Text

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SUBJECT: NEW COURT DECISION SET FOR AUGUST 5 ON JAPAN

SELF DEFENSE FORCES CONSTITUTIONALITY

1. SUMMARY: IN 1973, SAPPORO DISTRICT COURT RULED IN SO-CALLED NAGANUMA CASE THAT JAPAN SELF DEFENSE FORCES WERE UNCONSTITUTIONAL. SAPPORO HIGH COURT, WHICH HAS BEEN HEARING GOJ APPEAL EVER SINCE, IS SCHEDULED TO ANNOUNCE ITS DECISION ON AUGUST 5, MOST OBSERVERS EXPECT REVERSAL OF UNCONSTITUTED)100(RULING. WHATEVER OUTCOME, HOWEVER, LOSING SIDE IS LIKELY TO SEEK APPEAL TO SUPREME COURT.

END SUMMARY

2. IN SEPTEMBER 1973, SAPPORO DISTRICT COURT JUDGE RULED THAT JAPAN SELF DEFENSE FORCES (JSDF) WERE UNCONSTITUTIONAL. DECISION CAME DURING COURSE OF PROCEEDINGS IN SO-CALLED NAGANUMA CASE. THIS CASE, WHICH IN 1973 HAD ALREADY BEEN IN COURTS COURTS FOR NEARLY FOUR YEARS, HAS SINCE CONTINUED AS RESULT OF APPEAL FILED BY GOVERNMENT FOLLOWING THE DISTRICT COURT DECISION. APPEAL HAS BEEN UNDER CONSIDERATION BY SAPPORO HIGH COURT, AND THAT COURT IS TO ANNOUNCE ITS DECISION ON AUGUST 5. IN LIGHT OF HIGH INTEREST IN CASE AT TIME OF 1973 DECISION AND IN LIGHT OF ITS CONTINUING INTEREST BOTH TO GOJ AND USG, FOLLOWING SUMMARY OF EVENTS IS PROVIDED.

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3. IN 1969, GOJ (MILITARY OF AGRICULTURE AND FORESTRY REMOVED STATE FORESTRY RESERVE DESIGNATION FROM APPROXIMATELY 35 HECTARES OF WOODLAND IN NAGANUMA (NEAR SAPPORO). THIS ACTION WAS TAKEN TO PERMIT CONSTRUCTION OF JASDF NIKE BASE. BASE WAS COMPLETED IN 1973.

4. LOCAL RESIDENTS (ORIGINALLY 359--NOW DOWN TO ABOUT 200), VOCIFEROUSLY SUPPORTED BY VARIETY OF LEFTIST GROUPS, IMMEDIATELY INITIATED LITIGATION DESIGNED TO CAUSE GOVERNMENT TO RESCIND ACTION AND THEREBY PREVENT CONSTRUCTION OF BASE. PLAINTIFFS ARGUED THAT ESTABLISHMENT OF NIKE SMITH WOULD HAVE VARIETY OF HARMFUL ENVIRONMENTAL EFFECTS AND THAT DEFORESTATION WOULD GREATLY INCREASE FLOOD DANGERS IN LOCAL AREA. THEY ALSO ARGUED THAT PROPOSED GOVERNMENT COUNTERMEASURES WERE INADEQUATE. BEYOND THIS, AND MOST IMPORTANT, THEY INSISTED THAT SELF DEFENSE FORCES IN TERMS OF SIZE, EQUIPMENT AND CAPABILITIES , WERE SUCH AS TO CONTRAVENE PARAGRAPH 11, ARTICLE 9 OF JAPANESE CONSTITUTION WHICH SAYS THAT WAR POTENTIAL WILL NEVER BE MAINTAINED. THEIR THEORY, WHICH THEY HAVE PERSISTENTLY CLUNG TO EVER SINCE, WAS THAT SINCE FORCES WERE UNCONSTITUTIONAL, IN NO WAY COULD REMOVAL OF FORESTRY LAND FROM PUBLIC RESERVE MEET REQUIREMENT OF 'PUBLIC INTEREST' PRESCRIBED IN ARTICLE 26 OF FORESTRY LAW. IN SHORT, THEY CLAIMED THAT BECAUSE SELF DEFENSE FORCES WERE UNCONSTITUTIONAL, ALLOCATION OF LAND FOR NIKE BASE WAS ILLEGAL,

5. BEGINNING IN 1969, DISTRICT COURT TRIAL PROCEEDED--MOVING THROUGH 27 HEARINGS, ALLEGATIONS OF ATTEMPTS TO INFLUENCE JUDICIAL DECISIONS, CHARGES OF LEFTIST BIAS DIRECTED AGAINST JUDGE, AND OTHER ANCILLARY ISSUES--UNTIL IT WAS FINALLY DECIDED ON DECEMBER 7, 1973. JUDGE SHIGEO FUKUSHIMA OF SAPPORO DISTRICT COURT FOUND IN FAVOR OF PLAINTIFFS. HE SAID THAT SELF DEFENSE FORCE INDEED CONSTITUTED LAND, SEA AND AIR FORCES WHOSE POSSESSION IS FOREVER RENOUNCED UNDER ARTICLE 9 OF THE CONSTITUTION AND THAT THEY, THEREFORE, WERE UNCONSTITUTIONAL. HE FURTHER ACCEPTED PLAINTIFFS ARGUMENT THAT GOVERNMENT'S ACTION IN REMOVING FORESTRY RESERVE DESIGNATION THEREFORE DID NOT MEET 'PUBLIC INTEREST' REQUIREMENT.

6. ON SEPTEMBER 12, 1973, GOJ APPEALED DISTRICT COURT DECISION
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TO SAPPORO HIGH COURT. GOJ MAINTAINED ON APPEAL, AS IT HAD BEFORE, THAT CONSTITUTION PROVIDES FOR MAINTENANCE OF MINIMUM MILITARY STRENGTH TO FOR SOLE PURPOSE OF SELF DEFENSE AND THAT ARTICLE 9 PROHIBITION ON POSSESSION OF MILITARY FORCES AND WAR POTENTIAL THEREFORE DID NOT APPLY. BETWEEN SEPTEMBER 1973 AND MARCH 1976, SAPPORO HIGH COURT CONDUCTED A SERIES OF NINE APPELLANT HEARINGS. IN COURSE OF THOSE PROCEEDINGS, PLAINTIFFS AND THEIR LEFTIST ALLIES CONDUCTED DEMONSTRATIONS, SIGNATURE C

CAMPAIGNS, AND OTHER ACTIVITIES OUTSIDE COURT BUILDING.

ON MARCH 15* 1976, PREIDING

JUDGE OGAWA ANNOUNCED THAT HEARINGS HAD BEEN CONCLUDED AND THAT NO FURTHER TESTIMONY WOULD BE TAKEN. SINCE THAT TIME, PLINTIFFS' ATTORNEYS, WITHOUT SUCCESS, HAVE CHALLENGED FITNESS OF THREE JUDGE PANEL TO HANDLE CASE AND REPEATEDLY REQUESTED THAT HEARINGS BE RESUMED. THEY HAVE ARGUED THAT TESTIMONY FROM ADDITIONAL WITNESSES IS REQUIRED, HAVE CALIMED THAT FURTHER EVIDENCE MUST BE PRESENTED ON THE ANTI-DEMOCRATIC NATURE OF SELF DEFENSE FORCES, AND EVEN ARGUED THAT LOCKHEED CASE IS RELEVANT BECAUSE IT REVEALS SUBORDINATE NATURE OF JAPAN'S DEFENSE POLICY TO THAT OF UNITED STATES. THESE AND OTHER CLAIMS, HOWEVER, HAVE CARRIED THEM NOWHERE. AND COURT HAS REFUSED TO CONDUCT FURTHER HEARINGS.

7. COMMENT: THINKING OF MOST LOCAL OBSERVERS IS THAT COURT'S AUGUST 5 DECISION WILL SUPPORT GOJ POSITION AND REVERSE LOWER COURT DECISION. IN SHORT, ASSUMPTION IS THAT THE COURT WILL ARGUE THAT JSDF IS CONSTITUTIONAL AND, THEREFORE, GOJ ACTION IN REMOVING LAND FROM PUBLIC RESERVE AND ERECTING BASE ON IT WERE LAWFUL. IT IS ALSO DEEMED VIRTUALLY CERTAIN HERE THAT AS RESULT OF SUCH FINDING, PLAINTIFFS WILL ATTEMPT TO CARRY THEIR CASE FORWARD TO JAPAN SUPREME COURT. IN UNLIKELY EVENT THAT HIGH COURT SUPPORTS DISTRICT COURT RULING THAT SDF IS UNCONSTITUTIONAL, THEN GOJ WILL APPEARL TO SUPREME COURT. IN EITHER CASE, SO FAR AS JUDICIAL PROCEEDINGS ARE CNCERNED, AUGUST 5 DECISION SEEMS LIKELY TO ONLY MARK ONE MORE STAGE IN EVOLUTION OF THIS LENGTHY CASE.
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